

REMARKS

In response to the Office Action dated July 17, 2008, the Assignee respectfully requests reconsideration based on the above amendments and on the following remarks.

Claims 1, 3-18, and 20-32 are pending in this application.

Rejection of Claim 11 under § 112

The Office rejected claim 11 under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite. Claims 11 has been amended, so the Office is respectfully requested to re-examine claim 11.

Rejection of Claims Under § 102 (e)

The Office rejects claims 1, 3-18, and 20-32 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 7,212,979 to Matz. A claim, however, is anticipated only if each and every element is found in a single prior art reference. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). *See also* DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8th Edition) (hereinafter “M.P.E.P.”).

Claims 1, 3-18, and 20-32, however, are not anticipated by *Matz*. These claims recite, or incorporate, many features that are not disclosed or suggested by *Matz*. Independent claim 1, for example, recites “*receiving programming from a distribution network*” and “*establishing communication from the viewer appliance to a remotely located component over a connection to an alternative network.*” Support for these features may be found at least in the as-filed application at page 8, lines 12-24 and at page 12, lines 8-18. Independent claim 1 is reproduced below, and independent claims 9, 18, 23, and 25 recite similar features.

1. A method of capturing user commands from a viewer that are related to viewing content, comprising:

receiving programming from a distribution network;
receiving a user command at a viewer appliance communicating with the distribution network at a premises of the viewer;
establishing communication from the viewer appliance to a remotely located component over a connection to an alternative network; and
relative to receiving the user command, concurrently forwarding the user command from the viewer appliance over the connection to the alternative network.

Matz does not anticipate these features. *Matz* describes the transmission of viewer actions to a subscriber action database. See U.S. Patent 7,212,979 to *Matz* at column 6, lines 25-30. *Matz*, however, fails to teach or suggest “receiving programming from a distribution network” and “establishing communication from the viewer appliance to a remotely located component over a connection to an alternative network.” The patent to *Matz*, then, cannot anticipate the independent claims.

Independent claim 23 recites additional, distinguishing features. Independent claim 23, for example, recites “executing in parallel i) a capture of the user command and ii) concurrently forwarding the user command from the viewer appliance over the connection to the alternative network.” Support for such features may be found at least in the as-filed application at page 9, lines 5-9. Because *Matz* completely fails to teach or suggest these features, *Matz* cannot anticipate independent claim 23.

Claims 1, 3-18, and 20-32, then, cannot be anticipated by *Matz*. The independent claims recite many features that are not disclosed or suggested by *Matz*. The dependent claims incorporate these same features and recite additional features. Claims 1, 3-18, and 20-32, then, cannot be anticipated, so the Office is respectfully requested to remove the § 102 (c) rejection of these claims.

If any issues remain outstanding, the Office is requested to contact the undersigned at
(919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott P. Zimmerman". The signature is stylized with large, sweeping loops and is positioned above the printed name.

Scott P. Zimmerman
Attorney for the Assignee
Reg. No. 41,390